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THE POWERS OF THE STATES IN THE UNION AND THE NECESSITY OF PRESERVING AND EXERTING THEM.

BY THE LATE UNITED STATES SENATOR JOHN T. MORGAN,
OF ALABAMA.

THE sovereignty of the States is the true measure of the supreme power of "the people of the United States," and is the fountain source from which the organic forces of government will be supplied, to meet every new condition in the growth and progress of the nation that can arise in the future. The people of the United States are not personally and individually endowed with sovereign powers. Their sovereignty, in government, is not aggregated, but is separated, and is represented by and through the sovereignty of the States of which they are citizens.

If every voter in the United States should declare, in a general convention through authorized agents, that A is elected President of the United States, that vote would be a nullity. While it would represent the will of the people, it would be impotent as the expression of the sovereign will of the people, reserved to them in the sovereignty of the States; so, in the Senate, every State has equal power, without regard to the number of its population or its geographical area. It is the sovereignty of each State that gives to it this equality of power in the Senate, and that sovereignty is exercised by its people without question, let, or hindrance from any other sovereign State, or from any combination of States.

The predicates thus stated are true beyond question or denial, and will serve to illustrate, along with many others, the powers that comprise the reserved supremacy of State sovereignty in making provision for unforeseen conditions that must arise in

the growth and perfect consummation of self-government by the sovereign people, nationally designated as "the people of the United States."

Some of these reservations of sovereign powers are expressed in the Constitution as powers to amend that compact, through the sovereign will of the States, in which Congress alone has co-operative authority, as well as in the undefined power of two or more States to enter into compacts with the consent of Congress.

In every view of this vital subject, the sovereign power to provide for conditions that were unforeseen when the Constitution and the Amendments thereof were adopted, has its foundation source in the sovereignty of the States, which resides in the citizens—"the people"—of the States respectively. Thus, the people of the States are the actual source of all political power, and this power, authentically expressed in its sovereign authority, has the support of all the people of the United States.

The crucial point of time in our national history was when the original States, thirteen in number, met in convention at Philadelphia, through their delegates, under the Presidency of George Washington. Such an assembly of sovereign States had never met in all the history of nations, and its purpose was as new to the world of mankind as would be the creation of a new solar system. Each State was as independent of all the rest, and of the control of each other, as Prussia was of France or Italy was of Sweden. This fixed legal status was thus established in the treaty of 1783 with Great Britain.

The meeting of the States in convention was not a surrender of any feature of this separate independence. On the contrary, it was expressly confirmatory of the sovereignty and independence of every State. It was the first, noblest and best conception of liberty regulated by law that was ever expressed in an organic Code, and its justice and its excellent purpose were the guarantors of the real power and majesty of popular government based on the sovereignty of the people.

The new light in government of the people had engaged the contemplation of the greatest minds assembled on this continent from all the wide range of Christendom, and was grasped and made real by the cautiously plighted faith of thirteen sovereign States, and established on the basis of the moral courage that won American Independence.

No State of that galaxy had any special or peculiar advantage or ambition that it sought to advance. Each State had the generous purpose to grant equal and exact justice to all the rest and to their people; to promote the welfare and prosperity of the people of all the States; and to secure the general welfare of all the inhabitants of the country through all the conditions and events of coming ages, and against the aggressions of all unjust demands upon their liberties by foreign or domestic powers. Each State was happily freed from all political jealousies, and earnestly desired so to balance the blessings of a more perfect Union that no friction or cause of discontent should ever arise that could not be remedied by the action of an important tribunal created by common consent.

The Government of the United States was intended to be the object of the pride and of the cordial support of all the people of all the States, instead of being a suspected invader of their reserved sovereign rights. Such encroachments were not then actually anticipated, but they were guarded against with the same care as if they were known to be premeditated, so as to make such conditions practically impossible in the future.

These high purposes and great principles were represented in the Convention by groups of delegates from each State, among whom there was no inferior person. They were all men of experience in personal affairs, in war and in peace; some of them being the admitted equals, in wisdom, education and talents, of the greatest men in the world.

There was no attempt to excel in personal or political leadership; nor was there any taint of covetousness of power—known under the misnomer of “honorable ambition”—or of money, which is the master sin of covetousness. The highest honors that history can bestow had already been won by these men, and it only remained for them to secure the fruits of their labors to themselves and the posterity of the people they represented.

This they did, under God’s Providence, by “building wiser than they knew.”

They accomplished the task of laying the foundations of free self-government by the people, upon principles of truth and justice that are imperishable. That government was, therefore, to be as perpetual as time. It was attempted to fence in these foundations with buttresses that would repel all efforts at in-

vasion either from within the citadel or by outward assault, and this was done, chiefly, by ten Amendments of the original text of the Constitution before its ratification was secured. These Amendments are, mainly, organic laws of interpretation and construction of all grants of powers conferred, denied or reserved in the original text of the Constitution. Their mandate over such questions was made paramount.

There was scarcely a provision of the Constitution, or of the ten Amendments, that did not bear directly on the sovereignty of the States, then existing, or afterwards to be created; so that this element of Statehood was considered and weighed and settled to meet every future condition that could be foreseen or suggested to these great delegates.

Yet, they did not conceive that they had designated every power that might be necessary for the general welfare. They provided, however, that no exercise of power to meet new conditions should ever encroach upon the sovereign powers reserved to the States, through any action of the Government of the United States, nor that any State should voluntarily or negligently surrender any part of its sovereign powers to the National Government.

In the discussion of these subjects, each group of delegates, having in charge the sovereignty of their States was concerned to the extremest anxiety to provide every possible safeguard for these new, unprecedented and precious rights of the States and the liberties of their people. With this sacred task in hand, they scanned the future with the most critical caution.

In the levy of taxation, direct and in the form of tariffs upon imports and exports, they inserted in the text of the Constitution various provisions to protect the States and their ports of entry against unjust discriminations. In laws respecting immigration, bankruptcy, currency, representation in Congress, and in the Electoral College as well as in other national legislation, the rule of uniformity is prescribed.

The power of making treaties is vested in a special tribunal; as is the power of impeachment and the appointments to office, with express restrictions fixed in the text of the Constitution. The powers of originating bills of appropriations, of amending the Constitution in cooperation with the States; of declaring war, and of admitting States into the Union, are vested in Congress

as separate and original powers, in which no other power can exercise lawful control.

And other designated powers were created in the Constitution, to which it is not important that reference should be made. They were intended to meet difficulties that might arise in the execution of the settled provisions of the Constitution, rather than to meet any new conditions that were not provided for in the text of that instrument.

It was as perfect as any plan could be that originates in human wisdom and is not copied from any existing model. In clearness of diction and in the harmony of expression it is as if it was the work of a single great author. In fact, it is the aggregation of thoughts that many minds had wrought into a splendid maturity, and it is the best collation of the settled results of the most practical and the best matured of the actual experiences of the leading men of all Christian nations.

Each of the thirteen groups of delegates was an Embassy from a Sovereign Power that had no superior among the Sovereign Powers of the world, and each Ambassador was fully conscious of his individual participation in the sovereign power that had been, for the first time in history, conferred upon him as a citizen of his State, and esteemed as the noblest human power the great trust that had been conferred upon him as a representative of the sovereignty of the State he represented.

History, in its crucial researches, has failed to attribute any selfish ambition to any delegate in that grand conclave of Ambassadors that was personal to himself or was unjust or ungenerous to any other State represented in the Convention; and the severest criticism has not revealed a serious imperfection in their great work.

It did not escape their keen foresight or their anxious care that in such a convention of sovereign States some great matters must be left to future adjustment, in which their respective sovereignties would be in disagreement. Their independence of each other, notwithstanding their intimate association in their work of conducting another sovereignty that is not independent of the States, but is their common agent and even their vassal, is perfect, and is so considered by every State that belongs to the Union.

There is no fact in the history of the Government that is

more clearly defined or is more thoroughly respected than the independence of each State towards all the rest of the, now, forty-five States of the American Union.

If the fifteen Latin States of America were now assembled in convention to establish a common federal government, greater care could not be taken by them in adjusting their future relations as sovereigns than was observed in framing our "more perfect union."

In addition to the power of amending the Constitution, so as to provide against dissensions among the States two other powers of supreme importance were provided for in the text of the Constitution and the first ten Amendments, but were scarcely defined as to their scope and ultimate operation—except that they must, in every event, conform to our plan of government and to all the principles and provisions of the written Constitution. The preservation of these is a sacred national obligation that no man or State can legally violate.

These powers to meet the exigencies of "the more perfect union" are the rights of the States, by compact, to agree with each other as to anything lawful that may concern the welfare of two or more of the contracting parties, subject to the ratification of Congress.

Three illustrations of the value of these State rights are now claiming the attention and arousing the painful anxiety of the people of the entire country. They are cited, as instances of many other possible conditions, to show the vast benefits that are possible in the making of compacts between States.

The questions referred to, but not discussed, are: the necessity for uniform laws on the subject of marriage and divorce; of the enforcement of extradition of criminals between the States; and certain regulations in respect of the public health and the laws of quarantine.

These illustrations open an inquiry as to many matters where the differences of climate, industry and trade within this wide country are as variant as those of the countries in Europe and Asia that lie between the North Atlantic and the Equator in Africa. The adjustment of such differences among our forty-five sovereign States is quite possible under our Constitution, which gives the initiative to two or more States.

The illustrations given above are quite sufficient to prove the

great value of this power to the States and the people of our wide domain. But a still more impressive fact concerns the general purpose and the wise provisions of our plan of a written organic law, in the grand and harmonious promotion of the general welfare through the initiative of the States. It is that the State and Federal Governments are so carefully united in their powers and duties that they are, at least, capable of the closest cooperation, and are so united in the grandest scheme of blessing to men and nations that their purpose should be one and inseparable to work together for good.

If the exercise of these special powers for good be requisite, it is an assurance of success that they should originate in the fountains of State sovereignty, rather than through the inferior sovereignty of the Federal Government, and in pursuance of a purpose of central aggrandizement. This destructive evil was grasped by the throat in the ten Amendments; but it has survived all efforts of extermination and is still the master, because it has behind it the raising and expending of the vast revenues of forty-five united sovereignties. But it is not now the purpose to discuss the oppressiveness of such evils, but to indicate the powers that must finally be employed to eradicate them.

The sovereignty of the States fully and properly executed is the cure for every usurpation that the Government of the United States may ever attempt.

JOHN T. MORGAN.